IN RE INQUEST INTO THE DEATH OF LIM CHIN AIK, DECEASED

SESSIONS COURT, PULAU PINANG
KHAIRUL ANUAR ABD HALIM SJ
[CORONER'S INQUEST NO: 88-2-2013]
29 NOVEMBER 2013

CRIMINAL PROCEDURE: *Sudden death - Inquest - Car and driver crushed into underground hole - Circumstantial evidence showed driver might have been crushed to death - Search and rescue called off without finding body of driver - Whether inquest on death could be conducted by Coroner - Proper verdict - Whether death by misadventure - Criminal Procedure Code, ss. 329, 337 - Evidence Act 1950, s. 108*

At about 6.40pm, 14 June 2013, one Lim Chin Aik ('LCA') was driving his car in Georgetown to fetch his daughter from a school. A few minutes later, as LCA was driving along Jalan Macalister, a lightning arrester structure on a building by the side of the road fell down and crushed onto LCA's car. The crushing structure had created an 8-foot deep hole in the ground and apparently, had also burst open an underground water pipe. The facts further showed that, whilst remnants of LCA's car were recovered, LCA's body, or body tissues, had not been found or recovered from the scene of the incident. It was also evident that the rescue and recovery operation could not dig any deeper into the hole, as the soil structure was porous and could harm the surrounding buildings. Be that as it may, following a sudden death report on the case, and the ensuing inquest before the Coroner herein, a significantly noble question arose as to whether an inquest into the death of LCA could properly be carried out by the Coroner when LCA's body was never recovered, and if so, as to the proper verdict to be returned by the Coroner.

Held (death by misadventure):

(1) Notwithstanding the provision of s. 108 of the Evidence Act 1950 (presumption of death seven years after a person was unheard of etc), the court may make a finding that the death of a person occurred before the expiry of the seven years if circumstantial evidence existed which showed that death had indeed taken place before the period. This apart, s. 329(6) of the Criminal Procedure Code provides a getaway from the normal inquest proceeding where the body of the dead person could not be found. (paras 7-10)

(2) Considering the evidence of LCA's wife who confirmed that LCA would be taking Jalan Maclister on his way to fetch their daughter, of S1-17 who said that he saw LCA driving the said car 'at about after 6 pm' that day and was then alone in the car, and of S1-16 and SI-23 who testified that they saw a car being crushed by the structure that fell from the building, this court would hold that in all probabilities the driver of the car that was crushed by the said structure on that day was none other than LCA. (para 29)

(3) It was unfortunate that the wreckage was being cleaned by the Fire Department before the arrival of the forensic expert and his team. This wrong procedure as adopted by the Fire Department had deprived the forensic team from finding human tissue at the scene, should there was any. In any case, considering the evidence as a whole, this court is prepared to conclude that, in all probabilities, the body of LCA might still be buried inside the hole, and that the body could not be extracted for fear of public safety. (paras 32, 33, 37 & 39)

(4) The evidence presented before this court is sufficiently adequate, cogent and exact to enable the court to make the following findings on what happened on that 14 June 2013, namely, that: (i) LCA was at the material time driving his car bearing registration number PJD 8271 to pick his daughter at Jalan Pulau Tikus; (ii) while driving along Jalan Maclister, a structure fell down from a building known as Menara UMNO and crushed unto the said car; and (iii) the crush had created a big hole in the road, and incidentally had also buried LCA to death. Hence, upon the obtained facts and evidence, the inevitable verdict of this inquiry would be death by misadventure and the cause of death was as a result of being crushed by the fallen structure. (paras 44 & 45)

Case(s) referred to:

Ex parte Minister of Justice; Re Malcolm; Re Inglis [1965] NSWR 1598 ***(refd)***

In Re Inquest Into The Death Of Sujatha Krishnan, Deceased [2009] 5 CLJ 783 ***(refd)***

Inquest into the death of Azaria Chantel Loren Chamberlain [2012] NTMC 020 ***(refd)***

PP v. Shanmugam & 5 Others [2002] 1 LNS 160 HC ***(refd)***

Prudential Assurance Co v. Edmonds [1877] 2 App Cas 487 ***(refd)***

Re Loh Kah Kheng [1990] 1 CLJ 823; [1990] 2 CLJ (Rep) 156 HC ***(refd)***

Re Osman Bachit [1997] 2 CLJ Supp 269 HC ***(refd)***

Legislation referred to:
Births and Deaths Registration Act 1957, s. 24
Criminal Procedure Code, ss. 328, 329(1)(b), (6), 337
Evidence Act 1950, s. 108

Other source(s) referred to:
Jervis on Coroners, 9th edn, p 83

For the PP - Suhaimi Ibrahim (Lim Cheah Yit & Nurdeeni Abd Rashid with him); DPPs
Watching brief for the deceased's family - Gobind Singh Deo
Watching brief for JKP Sdn Bhd - Fareed Abdul Ghafar (Nur Liza Mohd Ali with him)

Reported by Wan Sharif Ahmad

JUDGMENT

Khairul Anuar Abd Halim SJ:

Preliminary

[1] This is an inquiry to determine the cause of death of one Lim Chin Aik (LCA). For the purpose of this inquiry, this court would act as a coroner and the scope of the hearing would normally be guided under s. 337 of the Criminal Procedure Code ('CPC'):

> A Magistrate holding an inquiry shall inquire when, where, how and after what manner the deceased came by his death and also whether any person is criminally concerned in the cause of the death.

[2] In the case of *Re Loh Kah Kheng* [1990] 1 CLJ 823; [1990] 2 CLJ (Rep) 156; [1990] 2 MLJ 126 Mohamed Dzaidin J (as he was then) held that:

> ... it is the primary duty of the learned magistrate conducting the inquiry to satisfy himself that there is sufficient evidence in whatever form or manner elicited and whether admissible or not, which could assist him in establishing the cause of death of the deceased, he is perfectly entitled to know and take cognizance of it ...

[3] Cause of death as defined in s. 328 of the CPC as follows:

> 328 Meaning of 'cause of death'
>
> In this Chapter the words 'cause of death' include not only the apparent cause of death as ascertainable by inspection or post-mortem examination of the body of the deceased, but also all matters necessary to enable an opinion to be formed as to the manner in which the deceased came by his death and as to whether his death resulted in any way from, or was accelerated by, any unlawful act or omission on the part of any other person.

[4] This is not a usual or even a normal inquest case. There is no body in this case that can be referred to as the deceased. And without a body, how could this Coroner's Court determine the cause of death?

[5] The court is facing with an unprecedented situation here. There is no local decided case on this point, and as rightly submitted by the learned Penang's Head of Prosecution, the word 'deceased' as stated in s. 337 of the CPC and *Re Loh Kah Kheng* clearly implied that 'a body' is a prerequisite before an inquiry can be held.

[6] So what we have here for start is merely a police report (exh. P2) from Mdm Lee Chai Song (SI1). The said report was lodged on 14 June 2013 and the contents read as follows:

> Pada jam lebih kurang 7 petang suami saya nama Lim Chin Aik KP: 690708-07-5667 umur 44 tahun telah keluar dari rumah alamat seperti di atas menaiki motorkar PJD-8271 jenis Honda City dan sehingga sekarang dia tidak pulang ke rumah. Saya telah hubungi h/phone no: xxx tetapi tidak dijawab, saya datang balai buat report pasal takut jadi apa apa atas keselamatan suami saya.

[7] There was no report lodged saying that the said Lim Chin Aik has died. In normal circumstance, when there was no body found, the alleged deceased's family or beneficiaries would seek the court's order for declaration of presumption of death under s. 108 of the Evidence Act 1950:

> When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

[8] Lord Blackburn in *Prudential Assurance Co v. Edmonds* [1877] 2 App Cas 487 at p. 509 stated that: A

> ... in order to raise a presumption that a man is dead from his not having been heard of for seven years, you must inquire amongst those who, if he was alive, would be likely to hear of him, and see whether or not there has been such an absence of hearing of him as would raise the presumption that he was dead. B

[9] But what if circumstantial evidence existed that may prove that the person is dead; should the family or interested party be forced to wait for seven agonising years just for formality? C Augustine Paul in *Re Osman Bachit* [1997] 2 CLJ Supp 269; [1997] 4 MLJ 445 held as follows:

> [3] Section 108 of the Act contemplated a case where nothing more was known than that a person had not been heard of for seven years or more. It did not prevent the court from finding on circumstantial evidence that the death of a person occurred before the expiry of seven years from the date of disappearance. (see p 449D-E) D

[10] The answer would be of course, no. Apart from the abovementioned authority, s. 329(6) of the CPC has provided a getaway from the normal inquest proceeding, where a body of a dead person could not be found: E

> (6) When the information given under subsection (1) is of such a nature that, though it affords reasonable ground for believing that a death has occurred, it is unlikely that the body of such deceased person can be found owing to its destruction by fire or otherwise or to the fact that the body is lying in a place from which it cannot be recovered, the officer referred to in subsection (2) shall nevertheless make an investigation and draw up a report, and forward the report to the nearest Magistrate who shall proceed in reference to the report as in the case of a report forwarded under subsection (5). F G

[11] The relevant part of the above section which is pertinent to this inquest would be the information given under sub-s. (b) of s. 329(1) which read as follows: H

> (b) That a person has been killed by another, or by an animal, or by machinery, or by an accident. I

[12] With that in mind, I shall now evaluate all the available evidence that has been presented before me.

Standard Of Proof

[13] The standard of proof is on the balance of probabilities sliding to the beyond reasonable doubt (see *In Re Inquest Into The Death Of Sujatha Krishnan, Deceased* [2009] 5 CLJ 783). The position is quite similar with United Kingdom, except where there is a finding of criminal offence, such as suicide or unlawful killing, where the standard of proof is beyond reasonable doubt.

The Facts

[14] Through SI-1 and exh. P2, this court was told that on 13 June 2013 at about 18:40hrs - 18:50hrs, LCA had gone out from his home at Lim Jetty to pick his daughter, Lim Huey Jiun (SI-2) from school, at Sekolah Menengah Perempuan Cina Pulau Pinang in Jalan Pulau Tikus. He went out in a motorcar Honda City PJD 8271 ('the motorcar'). He never came back, and that gave rise to this inquest.

The Menara Umno Building Tragedy

[15] On the very same day, a lightning arrester ('the said structure') fell down from one Menara UMNO building ('the building'), in Jalan Macalister ('the said road'), onto the ground and in the front of the said building, causing a big hole on the said road.

[16] This incident was seen by a number of witnesses including Loh Geok Seng ('SI-5'), Khor Hun Hin ('SI-16'), Halim bin Mat Noor ('SI-20') and Mah Chin Teong ('SI-23'). Of these witnesses, SI16 and SI23 confirmed that they saw a motorcar crushed by the said structure that fell from the said building. They were also shown a copy of CCTV recording (exh. P7) and confirmed that the incident happened at the said road. Nevertheless, none of them (SI-16 and SI-23) could confirm the identity of the motorcar that had been crushed by the said structure and sink into a hole in front of the said building (see also exh. P22 (1-28). That brings us to the next issue.

The Motorcar Identity

[17] I would not go into details on how finally, after more than 48 hours, the authorities were made aware of the possibility of a victim underneath the structure. Suffice to note that, what was once started as a cleaning operation then turned to search and recovery operation. However, for the purpose of this proceeding, I would like to put on record that it was a MPPP's CCTV contractor by the name of Zahareen that managed to detect the possibility of a motorcar beneath the structure, through CCTV traffic control center at Level 13, KOMTAR. The CCTV recording showed the structure falling down at about 18:34hrs. However, according to En Omar bin Md Kassin (SI-13) from MPPP engineering department, he was informed by Zahareen that the actual time of the incident was 18:45hrs and not 18:34hrs.

[18] Insp Muhammad Najib bin Zulkifli ('SI-10'), an investigating officer from Cawangan Trafik, IPD Timur Laut testified that during the search and recovery operation, the rescue team had found a wreckage of vehicle component with a chassis number plate and engine. He took a photograph of the wreckage (see exh. P19 a-j). The plate was covered with mud. The wreckage was believed to be a front bonnet of a motorcar. A part from that wreckage, one tyre and a rim of a motorcar was also found (see exh. P19 e, f and i). All these components were then cleaned by the fire department using their water hose (I shall come back to this, as this is quite important).

[19] The plate ('exh. P18') is the most important aspect of this inquiry. Exhibit P19j showed a chassis number PMHC 11266090204639 with an engine number 15A 71604671. SI-10 had conducted a search *via* JPJ-Link and found that the information matched with exh. P19j. SI-10 then forwarded the plate and details of the JPJ-Link search to Insp Mohd Izarrie bin Shafie ('SI-22').

[20] A Honda Service Manager, Chung Chee Khong ('SI-12'), testified that for every Honda City model, the chassis and engine numbers would be punched to the body, in front of firewall and another steel plate in front, and none of these could be taken out or compromised. SI-12 confirmed that the chassis plate and engine number referred to him (as per exh. P19 b, c and d) belongs to Honda City model. These numbers could not appear

in other vehicles as every vehicle would have its own chassis and engine number. And the most important finding is that the rivet pin of the plate was still attached when the rescue team found the wreckage (see exh. P16 and P19b).

[21] SI-22 is the investigating officer of this case. On 13 June 2013, pursuant to another report, he went to the said road to investigate the incident. The situation at that time was as per photographs P22 (1-28). On that day, no authorities were aware about a motorcar beneath the falling structure.

[22] Only on 15 June 2013, at about 19:30hrs, SI-22 was informed about a possibility of a body beneath the falling structure. When S1-22 returned to the incident scene, he was handed with the chassis number plate by SI-10.

[23] SI-22 proceeded to conduct a vehicle search from JPJ and found that the chassis number belonged to one Lim Chin Aik and a grey Honda City motorcar with registration number PJD 8271. A further investigation showed that there was report lodged by somebody, saying that her husband, Lim Chin Aik had not returned home since driving the said motorcar. A Perakuan Pendaftaran Kenderaan (exh. P4) also confirmed that the said motorcar was indeed registered in favour of Lim Chin Aik.

[24] At this stage, this coroner court is satisfied that the identity of the wreckage found under the said structure, was indeed a motorcar Honda City PJD 8271, belonged to Lim Chin Aik. Now, the court would consider whether it is possible that Lim Chin Aik was in the said motorcar at the time of the incident.

The Route

[25] SI1 testified that she has been married with Lim Chin Aik since 1993 (see exh. P8). From this marriage, they had three children. Lim Chin Aik was an economy rice seller, operated in Pulau Tikus. According to SI1 it was a daily routine for Lim Chin Aik to pick up their third child from school. The third child is in afternoon session and normally would end at about 18:15hrs. Sometimes Lim Chin Aik would use the motorcar to pick up SI-2, and sometimes with motorbike. If he used a motorbike, Lim Chin Aik would take a route from Esplanade – Burmah Road – Pulau Tikus. If he used the motorcar, he would take Macalister road – Burmah Road – Pulau Tikus. If the weather is bad, Lim Chin Aik would normally use the said motorcar.

[26] SI1 can confirm about those routes as she sometimes followed her husband to pick up SI-2. She also confirmed that whenever Lim Chin Aik used the motorcar to pick SI2, he would pass the said building at Macalister Road. Lim Chin Aik would go out around 18:40-18:50hrs. And on 13 June 2013, Lim Chin Aik did take the said motorcar to pick up SI-2. He told SI-1 that it was about to rain and he was going to take the said motorcar. One Goh Chee Keong (SI-17) a parking attendance saw that Lim Chin Aik did went out driving with the said car, at about after 18:00hrs. SI-17 knew Lim Chin Aik and the car he was driving, and he confirmed that Lim Chin Aik was driving alone at that time.

[27] SI1 testified that Lim Chin Aik would normally be back around 19:30hrs. On that day, she received a phone call from SI-2 twice, saying that her father had yet to pick her. After assuring SI-2 that her father might be a bit late due to the rain, SP1 called his cellphone. However she found out Lim Chin Aik had left his cellphone at home, and according to her, this would be normal, if Lim Chin Aik went just for a while.

[28] SI-2 was brought home by her teacher at about 21:00hrs. At the same time, SI1 also heard about the building incident. Fearing about her husband's whereabouts and safety, SI-1 requested her brother-in-law, Lim Khung Ling (SI-9) to search for him. The search was futile. On the next day, SI-1 to look out for her husband using all the possible roads that he might take, save for Macalister Road as the road was closed to the public at that time. A search at government and private hospitals also did not bear any success. Later in the late afternoon, SI-1 lodged the said report.

[29] SI-16 and SI-23 confirmed on 13 June 2013, they saw a motorcar was crushed by the said structure that fall from the said building. The identity of the motorcar has been established earlier, and considering SI-1 evidence with SI-16 and SI-23, I hold that, in all probabilities, the driver of the motorcar that was crushed by the said structure on that day was indeed Lim Chin Aik.

Forensic Evidence

[30] After the structure fell down and crushed the said motorcar, it formed an 8 feet deep hole on the said road, with water gushing out of it (see exhs. P5 – 29 and 30), P22 -7, 23, 27 and 28)

(there is a water pipe beneath it). Once the wreckage was discovered and pull out from the hole, it was cleaned using a fire department hose.

[31] For that, the testimony of Dato Dr Zahari is very pertinent here. Dr Zahari had given a testimony before the public inquiry pertaining to this incident. The transcript of his evidence has been accepted by this coroner court and marked as exh. P25. In his testimony the doctor stated that he and his team could not find any human tissues from the said wreckage and the reason are, in his own words:

> During recovery, they had hosed the parts with water, to clean the car parts, to look for chassis number. That means we were informed too late. The procedure usually is to recover, before you clean anything. We have to decide on the best method. Usually we put it in one place, we have some kind of a filter water will pass through the filter, and any tissue or remnant will be blocked by the filter, and they may be recovered. But however, the main part of the car was still down there, and I don't think we could find. I think there was no way we could get the body, without digging much more deeper.

[32] It is very unfortunate that the wreckage was cleaned up before the arrival of this witness at the incident scene. However, from the evidence of Ketua Balai Bomba Lebuh Pantai, Ismail bin Hj Mohd Zain ('SI-15'), this act was not initiated by the Fire Department, but was a direction from a third party.

[33] Because of that, whatever human tissue that might be recovered from that wreckage has gone because of the wrong procedure adopted by the Fire Department (as they were directed to do so).

The Possibility Of Lim Chin Aik's Body Still Buried Inside The Hole

[34] The main part of the said motorcar (the driver seat) is yet to be discovered. According to SI-15 the rescue and recovery operation could not proceed any deeper as according to one engineer Dato IR KK Lim the soil structure is not that strong and it would possibly harm the surrounding buildings.

[35] SI-22 who was also there, as an investigating officer confirmed that no human tissue was discovered. He testified as follows:

> Saya dapati terdapat besi cerucuk dikeluarkan dari lubang tersebut dan saya juga dapati terdapat bongkah batu yang besar dikeluarkan dari lubang tersebut. Tidak keseluruhan komponen dapat digali kerana semasa proses galian dijalankan, berlaku mendapan tanah yang semakin dalam yang saya dimaklumkan oleh ahli BOMBA, kerja-kerja penggalian tidak dapat diteruskan kerana dikhuatiri akan menjejaskan struktur bangunan yang lain disekelilingnya.

[36] The search and recovery operation was then officially called off at about 12:00hrs on 17 June 2013.

[37] At this stage, after considering the previous evidence as a whole, I found that, in all possibility, Lim Chin Aik's body might indeed still be buried inside the hole which could not be extracted, for fear of public safety.

Other Evidences

[38] I have also considered the evidence of those people that was closed to Lim Chin Aik, the daughter – SI2, the son – Lin Chia Yiang ('SI3'), the father – Ang Kim Looi @ Ang Kim Hoi ('SI-7'), the brother – Lim Khung Ling ('SI-9'), the mother – Lim Tian Chung ('SI-11'), all of them confirmed that Lim Chin Aik never returned home since that unfortunate day, and no contact was ever made to them.

Cause Of Death

[39] As rightly submitted by Mr Gobind, by referring to the case of *Inquest into the death of Azaria Chantel Loren Chamberlain* [2012] NTMC 020, since the body was never found, it is not possible to find the terminal cause or mode of Lim Chin Aik's passing.

[40] However in *Ex parte Minister of Justice; Re Malcolm; Re Inglis* [1965] NSWR 1598 at p. 1604, Mc Clemens J said:

> I think that where the Coroners Act speaks of the cause of death it means the real cause of death namely the disease, injury or complication not the mode of dying as e.g. heart failure, asphyxia, asthenia etc.

[41] *Jervis on Coroners*, 9th edn. at p. 83 also suggests that:

> In order to distinguish between one sort of death and another it is necessary to consider not the terminal cause of death but the cause which was the real cause of death ... it is suggested that

A insofar as the terminal cause of death directly and consequently follows from a definable event, the death should be regarded as caused by the finable event.

[42] In *Azaria Chantel*'s case, the Coroner described a death by misadventure in circumstances when the death has occurred as the result of a lawful or unlawful intentional human act unforeseeable leading to death. Accident has also been described as an unforeseen misfortune or mishap resulting in some physical injury or harm which has a causal connection with the death.

[43] In *PP v. Shanmugam & 5 Others* [2002] 1 LNS 160; [2002] 6 MLJ 562, Suriyadi J held as follows:

> At the conclusion of an inquiry the learned magistrate may deliver the finding of death by misadventure (caused, by eg accident, struck by lightning, drowning, suicide or death caused by person or persons unknown as a result of lawful or unlawful intentional and or unintentional act culminating in unforeseeable death), death caused by act of God, death caused by natural causes and open verdicts. As for the latter verdict, where there is insufficient evidence to bring in any of the other verdicts, then open verdict must be adverted to.

[44] In considering all of the evidence, I am satisfied that the evidence presented before me is sufficiently adequate, cogent and exact, and indeed those evidence also excludes all other reasonable possibilities, to find that what occurred on 13 June 2013 at about 18:45hrs – 18:50hrs was that, Lim Chin Aik had driven the said motorcar to pick his daughter at Jalan Pulau Tikus; while driving along Jalan Macalister, the said structure fell down and crushed onto the said motorcar and created a hole in the said road, with the said motorcar and Lim Chin Aik beneath the structure, and this caused his demise. The inevitable verdict of this inquiry would therefore be misadventure.

Findings

[45] These are my findings based on the available evidence:

(i) The name of the deceased was Lim Chin Aik, born on 8 July 1969;

(ii) Lim Chin Aik died at Jalan Macalister, Penang on 13 June 2013 at about 18:45-18:50hrs and

(iii) The cause of his death was as a result of being crushed by the fallen structure.

[46] Pursuant to s. 24 of the Births and Deaths Registration Act 1957 a certificate on the findings would be issued and served against the relevant authority by today.

[47] And on a personal note, I would like to express my deepest gratitude to all counsel who had assisted me throughout this inquest and special thanks to Tn Suhaimi bin Ibrahim, Tn Lim Cheah Yit, Pn Nurdeeni binti Abd Rashid, Mr Gobind Singh Deo and En Fareed bin Abdul Ghaffar.